

**LEO FRANK'S
APPEAL
AWAITS
DECISION OF
JUDGE W. T.
NEWMAN**

Necessity for Stating
That

Probable Cause for
Appeal

Exists Causes Court
to De-
fer Action

HABEAS CORPUS WRIT
DENIED ON
SATURDAY

If Appeal to Supreme
Court Is

Certified, Case May
Reach

Decision in the Next
Thirty

Days

Whether Leo M. Frank is to be permitted to Appeal to the United States Supreme Court from Judge W. T. Newman's decision denying his petition for a Writ of Habeas Corpus will be definitely determined by Judge Newman, Monday morning at 10 o'clock.

After Judge Newman went into his chambers Saturday afternoon, following his denial in Open Court of the Petition and his announcement that he was disposed to certify an Appeal, Attorney Henry C. Peeples, of Frank's Counsel, called his attention to a law enacted by congress in 1908 which requires that when a Federal Judge allows an Appeal in Habeas Corpus Proceedings he must issue a Certificate Stating that in his opinion there exists "a Probable Cause for Appeal."

This request for a Certificate of Probable Cause for an Appeal has changed the aspect of the Case and while the Court is still disposed to allow the Appeal, he will not determine until Monday whether he will certify to the cause under the section referred to, which will be necessary if the Appeal is allowed.

Judge Newman discussed the matter at some length with Frank's Attorneys and informed them that he would take the question under consideration and announce a decision on Monday morning. This means that the request of Frank's Attorneys for the right to Appeal is held in abeyance.

It did not become known until late Saturday evening that Judge Newman had decided to delay his decision.

LAW COVERS THIS POINT.

The following dispatch pertaining to this point was sent out from Washington Saturday night by the Associated Press:

"A Federal Law enacted in 1908 requires that a Federal Judge in granting an Appeal in Habeas Corpus Proceedings issue a

Certificate stating that in his opinion 'Probable Cause for an Appeal' exists."

"The law reads:

"'From the final decision by a Court of the United States on a Proceedings in Habeas Corpus where the detention complained of is by authority of process issued out of a State Court, no Appeal to the Supreme Court shall be allowed unless the United States Court by which the final decision was rendered or a justice of the Supreme Court shall be of opinion that there exists Probable Cause for an Appeal, in which event, on allowing the same, the said Court or Justice shall certify that there is Probable Cause for such Allowance.'"

"Before 1908 such a certificate was not required. Should a judge not forward such a certificate, it was stated today that an Appeal probably would be dismissed by the Supreme Court."

"An Appeal in the Frank Case, properly lodged, would not ordinarily come up for consideration by the Supreme Court for nearly two years, but, most Applications by State Officials to advance to Habeas Corpus Appeals are granted."

MAY WIN FIRST POINT.

If Judge Newman determines to allow the Appeal, this will be the first point Frank has won since he was taken in custody on April 28, 1913, and charged with the murder of Mary Phagan, although his Case has found its way through the various ramifications of the Courts.

Should Judge Newman allow the Appeal it will mean that Frank will get his Case on the Calendar of the United States Supreme Court. That Court, however, will only review the Judgment of Judge Newman in denying the Writ of Habeas Corpus.

In doing this, the Court will, of necessity, if only incidentally, review the grounds upon which Frank brought his Writ for Habeas Corpus, which were that the Superior Court of Fulton County lost jurisdiction when it permitted the verdict against him to be

returned in his absence from the Court Room, and that when this was done his Rights as a Citizen of the United States were violated.

With Frank's Appeal pending in the Federal Courts, the Execution of the sentence imposed upon him by the State Courts will be automatically suspended and he will not be hanged on January 22, the date fixed by Judge Ben H. Hill in the last sentence pronounced upon him.

If Judge Newman grants the Appeal, it will probably be thirty or sixty days before the Case is heard by the United States Supreme Court, although it will go on the Calendar immediately after the Appeal reaches Washington. As stated in the Associated Press telegram, the Case would not ordinarily be reached for a year or two, but Solicitor Dorsey and Attorney General Warren Grice, representing the State, would be certain to move for an early hearing.

In denying Frank's petition Judge Newman said:

"This matter has been tried in the State Courts. The State Supreme Court held that it did not present a Federal Question, or if one had been presented, it should have been embodied in the motion for a new trial."

"This decision was taken before the justices of the United States Supreme Court, and Justices Lamar and Holmes held that it is for the States to determine the method of practice, and that what was done in the State Courts was a matter of practice and involved no Federal Question. The Status of the Case seems to be the same here as when it went to the United States Supreme Court. In view of this, I have not the jurisdiction or the power to grant the Writ. It, therefore, follows that the petition is denied."
